

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re Patent Application of |) | MAIL STOP APPEAL BRIEF - |
| Todd Peterson et al. |) | PATENTS |
| Application No.: 10/806,750 |) | Group Art Unit: 2872 |
| Filed: March 22, 2004 |) | Examiner: Joshua L. Pritchett |
| For: USE OF LIGHT SCATTERING |) | |
| PARTICLES IN DESIGN, |) | |
| MANUFACTURE, AND QUALITY |) | |
| CONTROL OF SMALL VOLUME |) | |
| INSTRUMENTS, DEVICES, AND |) | |
| PROCESSES |) | |

REPLY BRIEF

Commissioner for Patents
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Sir:

This Reply Brief is being filed in response to arguments raised in the Examiner's

Answer (the Answer) dated September 18, 2008.

Claims 1-5, 7, 8, 14-16, 18, 19, and 32-35 are distinguishable over *Schultz*

In the Appeal Brief, Appellants asserted that *Schultz* is directed towards the use of plasmon resonance entities (PREs) to detect or provide information about an analyte and that *Schultz* does not disclose or concern itself with resonance light scattering particles to gather information about fluids. (See Appeal Brief, pp. 8-13).

In the Answer, the Examiner alleges that because *Schultz* discloses cells and the definition of a fluid is "a substance tending to flow or conform to the outline of its container", *Schultz* discloses the presently recited fluid. (See Answer, pp. 7 and 8). Appellants disagree because *Schultz's* disclosure of cells does not mean that *Schultz* teaches fluids. (See Appeal Brief, pp. 8-12).

Further, there is no teaching or suggestion in *Schultz* regarding fluid dynamics. (See Appeal Brief, pp. 9-10). In the Answer, the Examiner takes the position that the term dynamic means movement or in flux. (See Answer, pp. 8-9). In fact, and as discussed in the Appeal Brief, *Schultz* focuses on cell sorting techniques (FACS) using cells that are labeled with the PREs and *Schultz* can not and should not be interpreted as any type of teaching of fluid dynamics of a fluid. (See Appeal Brief, p. 10).

In the Answer, the Examiner alleges that the claim language "specifically bound" is a subset of some bound or attached distribution. (See Answer, p. 9). In this regard, as discussed in the Appeal Brief, nowhere does *Schultz* disclose measuring fluid dynamics (or anything else) using particles that are unbound to another entity. (See Appeal Brief, pp. 10-11).

Claim 6 is distinguishable over *Schultz* in view of *Tateiwa*

The Examiner alleges that *Tateiwa* teaches evaporation in addition to teaching condensation. (See Answer, p. 10). In the Appeal Brief, Appellants asserted that *Tateiwa*

teaches that the laser light source does not result in fluid evaporation, since evaporation would negate determination of light scattering by condensed water droplets. (See Appeal Brief, p. 14). Thus, Tateiwa cannot be cited for the proposition that a light source must necessarily be equal to fluid evaporation. (See Appeal Brief, p. 14). Accordingly, the combination of Schultz and Tateiwa fails to disclose each and every element of the claimed invention, and one skilled in the art could not arrive at a method for the claimed invention by combining these two references. (See Appeal Brief, p. 14).

Conclusion

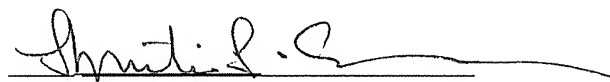
Based on the above discussion, the pending claims are patentable over *Schultz* and *Tateiwa*, either alone or in combination. The remaining points in the Examiner's Answer with respect to appealed claims are addressed in the Appellants' Appeal Brief, and therefore are not discussed further herein. For the reasons presented in the Appellants' Appeal Brief and this Reply Brief, the rejections of the claims are not supported by the cited prior art references and thus Appellants respectfully request that the same not be maintained.

Respectfully submitted,

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Date November 14, 2008

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